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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 THE NEXT VIETNAM PROJECTS
FOUNDATION, INC.; RADIX
14 CORPORATION A/K/A VIETNAM
VETERANS FOR FACTUAL HISTORY;
15 SAIGON BROADCASTING
TELEVISION NETWORK, INC.; MY
16 VAN INTERNATIONAL, INC.; NAM
PHAM; CARINA OANH HOANG; DIEP
17 PHAN; TRONG PHAN; SON NGUYEN;
THANH-MAI NGUYEN and MINH
18 NGUYEN,

19 Plaintiffs,

20 v.

21 KOSTER FILMS, LLC; FREDERICK
KOSTER, BT PRODUCTIONS, LLC and
22 BRIAN TOOKER,

23 Defendants.

Case No. 8:22-cv-02130-JWH-DFM

***EX PARTE APPLICATION TO
DEEM DEFENDANTS
FREDERICK KOSTER AND
KOSTER FILMS LLC AS
PROPERLY SERVED, OR IN
THE ALTERNATIVE, FOR
ALTERNATIVE SERVICE AND
ADDITIONAL TIME TO
EFFECT ALTERNATIVE
SERVICE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF***

District Judge: Hon. John W.
Holcomb
Mag. Judge: Hon. Douglas F.
McCormick

Complaint filed: Nov. 23, 2022

TABLE OF CONTENTS

		Page
1		
2		
3	I. INTRODUCTION	4
4	II. FACTUAL BACKGROUND	4
5	III. LEGAL STANDARD	8
6	IV. ARGUMENT	9
7	A. Plaintiffs Have Served Mr. Koster And Koster Films LLC Pursuant	
8	To Cal. Code of Civil Procedure Section 415.40 and/or Section	
9	417.20(a) Because Plaintiffs Have Served Them Via Mail At The	
10	Address Mr. Koster Has Publicly Represented – To The Arizona	
11	Corporations Commission, The Arizona Courts, And The State Of	
12	Arizona – As Their Address.....	9
13	B. Alternatively, Plaintiffs Request Permission To Serve Mr. Koster	
14	and Koster Films, LLC Via Email, Or In The Alternative Via	
15	Publication, And Additional Time To Effect Such Service	10
16	1. This Court Should Authorize Plaintiffs To Serve Mr. Koster	
17	and Koster Films, LLC Via Email Because the Koster Films,	
18	LLC Website Lists A Contact Email Address, Plaintiffs Have	
19	Regularly Communicated With Mr. Koster Via Email, And	
20	Plaintiffs Have Received No Bounce-Back Messages In	
21	Response To Their Recent Emails.....	11
22	2. In The Alternative, This Court Should Authorize Plaintiffs To	
23	Serve Mr. Koster and Koster Films, LLC Via Publication	
24	Because They Have Exercised Reasonable Diligence In	
25	Attempting To Serve Them, and Because Plaintiffs Possess	
26	Valid, Pending Causes Of Action Against Them.....	12
27	3. This Court Should Grant Plaintiffs Additional Time To Effect	
28	Service On Mr. Koster And Koster Films, LLC Via	
	Alternative Means.....	13
	V. CONCLUSION	14

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Gaffigan v. Does 1-10

689 F. Supp. 2d 1332 (S.D. Fla. 2010)..... 11

Glob. Impex, Inc. v. Specialty Fibres LLC

77 F. Supp. 3d 1268 (N.D. Ga. 2015)..... 11, 12, 13

Rio Properties, Inc. v. Rio Int'l Interlink

284 F.3d 1007 (9th Cir. 2002) 8, 10

STATE CASES

Bein v. Brechtel–Jochim Grp.

6 Cal.App.4th 1387, 8 Cal.Rptr.2d 351 (1992) 13

Donel, Inc. v. Badalian

87 Cal.App.3d 327, 150 Cal.Rptr. 855 (1978) 12

FEDERAL STATUTES, REGULATIONS, AND RULES

Federal Rules of Civil Procedure

Rule 4(e) 8, 11

Rule 4(m) 14

STATE STATUTES, REGULATIONS, AND RULES

California Code of Civil Procedure

§ 415.30 8, 10, 11

§ 415.40 passim

§ 415.50 8, 10, 12, 13

§ 415.50(a) 12

§ 417.20(a) passim

OTHER AUTHORITIES

<https://azcc.gov/corporations/faqs/statutory-agents> (last visited Feb. 1, 2023) 9

<https://azcc.gov/docs/default-source/corps-files/newspaper-list-for-publishing.pdf>
(last visited Feb. 1, 2023) 13

1 **I. INTRODUCTION**

2 Plaintiffs The Next Vietnam Projects Foundation, Inc., Radix Corporation a/k/a
 3 Vietnam Veterans for Factual History, Saigon Broadcasting Television Network, Inc.,
 4 My Van International, Inc., Nam Phan, Carina Oanh Hoang, Diep Phan, Trong Phan,
 5 Son Nguyen, Thanh-Mai Nguyen and Minh Nguyen's (collectively, "Plaintiffs") have
 6 made all reasonable efforts to effect service on Defendants Frederick Koster and
 7 Koster Films, LLC. Plaintiffs undertook substantial research to identify potential
 8 addresses and attempted personal service at the residential addresses they were able to
 9 identify for Mr. Koster, including multiple stakeouts. Mr. Koster's official address –
 10 the address identified on his driver's license, the address he used in court filings in
 11 Arizona, and the address he has listed as statutory agent for Koster Films, LLC – is a
 12 post office box, so Plaintiffs served Mr. Koster and Koster Films, LLC at this address
 13 on several occasions, one of which was successfully delivered to the post office box
 14 and not returned. In addition, Plaintiffs have sent courtesy copies to Mr. Koster's and
 15 Koster Films, LLC's known email addresses.

16 Plaintiffs bring this *Ex Parte* Application respectfully requesting this Court to
 17 issue an order finding that Plaintiffs have served Mr. Koster and Koster Films, LLC
 18 via mail pursuant to Cal. Code of Civil Procedure Section 415.40 and/or Section
 19 417.20(a). In the alternative, Plaintiffs seek permission to serve Mr. Koster and Koster
 20 Films, LLC via email, and, if the Court is disinclined to authorize service via email,
 21 Plaintiffs alternatively respectfully request an order authorizing them to serve Mr.
 22 Koster and Koster Films, LLC via publication in Maricopa County, Arizona. In order
 23 to accomplish this, Plaintiffs further respectfully request a sixty (60)-day extension of
 24 the February 21, 2023 deadline to effect service on those Defendants.

25 **II. FACTUAL BACKGROUND**

26 Certain of the Plaintiffs in this matter hired Defendants Frederick Koster and
 27 Koster Films, LLC to help create a film regarding the Vietnam War as told from the
 28 South Vietnamese perspective to be distributed for free, for educational purposes. Mr.

1 Koster was paid approximately \$300,000 for his work on the film. In return, however,
 2 Plaintiffs have received nothing – not the film, nor the underlying footage used to
 3 create the film, both of which Defendants have wrongfully refused to turn over to
 4 Plaintiffs. Plaintiffs, accordingly, filed this suit on November 23, 2022 to seek relief
 5 from this Court.

6 Since the filing of their Complaint, Plaintiffs have undertaken extensive efforts
 7 to serve Mr. Koster and his company, Koster Films, LLC. Previous research
 8 conducted on behalf of Plaintiffs, and further research by Plaintiffs’ counsel, identified
 9 four potential addresses for Mr. Koster. (Declaration of Jacob Kevin Poorman
 10 [“**Poorman Dec.**”], ¶ 2.) Those addresses were (1) 42227 North Stonemark Drive,
 11 Anthem, AZ 85086; (2) 42003 North Moss Springs Road, Anthem, AZ 85086; (3)
 12 3655 West Anthem Way, Anthem, AZ, 85086; and (4) 44047 North 43 Avenue, P.O.
 13 Box 75464, Phoenix, Arizona 85087. (*Id.*) Because the 44047 North 43 Avenue
 14 address was a post office box, Plaintiffs attempted to serve Mr. Koster and Koster
 15 Films, LLC personally at the first three addresses, but, according to Plaintiffs’ process
 16 server:

- 17 • the 3655 West Anthem Way location was a PostNet Mailbox store where,
 18 per the clerk, Mr. Koster no longer maintained a mailbox;
- 19 • the 42003 North Moss Springs address was a residence, but a woman who
 20 answered the door at that location stated that she did not know Mr. Koster
 21 and that she had just moved in, and the server observed moving boxes in
 22 the residence;
- 23 • the 42227 North Stonemark Drive address was also a residence, but a
 24 woman who answered the door at that location stated that she did not
 25 know Mr. Koster.

26 (*See* December 12, 2022 Declaration of Diligence of Jerry L. Horacek;
 27 December 20, 2022 Declarations of Diligence of Jerry L. Horacek.)

28 Although the 44047 North 43rd Avenue address was a post office box,

1 Plaintiffs' research showed that it was Mr. Koster's and Koster Films, LLC's current,
 2 official address. The Arizona Corporation Commission website identifies Mr. Koster
 3 as the statutory agent for Koster Films, LLC, and states that Mr. Koster's address as
 4 statutory agent is 44047 North 43 Avenue, P.O. Box 75464, Phoenix, Arizona 85087.
 5 (Poorman Dec., ¶ 3, Ex. A.) Similarly, in a separate litigation Mr. Koster filed in
 6 Arizona, wherein Mr. Koster represented himself for a portion of the litigation, Mr.
 7 Koster listed the same address as his address on the caption of his pleadings, and also
 8 submitted a copy of his driver's license, which identifies the same address. (Poorman
 9 Dec., ¶ 4, Exs. B and C.) Plaintiffs therefore also attempted to serve both Mr. Koster
 10 and Koster Films, LLC at 44047 North 43 Avenue, P.O. Box 75464, Phoenix, Arizona
 11 85087 separately via first-class mail, postage prepaid, requiring a return receipt,
 12 pursuant to California Code of Civil Procedure section 415.40, on December 12, 2022.
 13 (Declaration of Tracy Lim [**"Lim Dec."**], ¶¶ 2-3, Exs. A & B.) The mailing to Mr.
 14 Koster was returned as undelivered but, although Plaintiffs did not receive an executed
 15 return receipt for the mailing to Koster Films, LLC, it was not returned to Plaintiffs.
 16 (Lim Dec., ¶¶ 2-3.) Because Plaintiffs had not received return receipts for the first
 17 mailing, they again attempted to serve Mr. Koster and Koster Films, LLC pursuant to
 18 Section 415.40 via the same procedure at the 44047 North 43 Avenue address on
 19 January 9, 2023. (Lim Dec., ¶¶ 4-5, Exs. C & D.) This mail was returned to Plaintiffs
 20 as undelivered. (Lim Dec., ¶¶ 4-5.) Plaintiffs also on January 9, 2023 separately
 21 mailed copies of the summons and complaint to the 44047 North 43 Avenue address
 22 without require a return receipt so that the mailing would be placed directly in Mr.
 23 Koster's p.o. box. (Lim Dec., ¶¶ 6-7, Exs. E & F.) These mailings were also returned.
 24 (Lim Dec., ¶¶ 6-7.)

25 During this time, in their continuing efforts to serve Mr. Koster and Koster
 26 Films, LLC, Plaintiffs requested a "postal break" from the Post Office at the 44047
 27 North 43 Avenue address to identify any other address that Mr. Koster had provided
 28 to the Post Office. (Poorman Dec., ¶ 5.) The postal break identified the 42227 North

1 Stonemark, Anthem, AZ 85086 address at which Plaintiffs had previously attempted
 2 service of process. (*Id.*) Based on this information, Plaintiffs requested that their
 3 process server stake out that location, even though Plaintiffs had previously attempted
 4 service at this address, out of abundance of caution as a final attempt to serve Mr.
 5 Koster and Koster Films personally. (*Id.* at ¶ 6.) Plaintiffs’ process server conducted
 6 a stake out of that location at different times and on different days of the week – from
 7 4:45 – 8:00 p.m. on January 12, 2023, and again from 6:30 a.m. – 9:30 a.m. on January
 8 21, 2023. (*See* January 31, 2023 Declaration of Diligence of Jerry L. Horacek.)
 9 Plaintiffs’ process server, however, was not able to locate Mr. Koster at the location,
 10 and was again informed by the apparent resident of 42227 North Stonemark that she
 11 did not know Mr. Koster. (*Id.*) Plaintiffs also attempted to serve Mr. Koster and
 12 Koster Films, LLC via mail pursuant to Section 415.40 at the 42227 N. Stonemark
 13 address, but that mail was returned as undelivered. (Lim Dec., ¶¶ 8- 9, Exs. G & H.)

14 In addition to these efforts, Plaintiffs also served Mr. Koster via email. Prior to
 15 this suit, Plaintiffs had communicated with Mr. Koster at two different email
 16 addresses: fred@kosterfilms.com and fknotebook@gmail.com. (Declaration of Nam
 17 Pham [**“Pham Dec.”**], ¶ 3.) The website for Koster Films, LLC –
 18 <http://www.kosterfilms.com/> – also states that Koster Films, LLC can be contacted
 19 through the fred@kosterfilms.com email address. (Poorman Dec., ¶ 8, Ex. K.)
 20 Plaintiffs’ counsel therefore emailed the summons and complaint to Mr. Koster at
 21 these email addresses twice – on December 13, 2022 and January 9, 2023 – also
 22 emailed these addresses on January 25, 2023 to request that Mr. Koster accept service
 23 via email, and emailed these addresses again on February 3, 2023 to give Mr. Koster
 24 notice that Plaintiffs would be filing the instant *ex parte* application. (Poorman Dec.,
 25 ¶ 7 Exs. D-J.) Although Mr. Koster did not respond to these emails, Plaintiffs’ counsel
 26 did not receive any bounce-back messages, indicating that the email addresses are still
 27 active. (Poorman Dec., ¶ 7.)

1 **III. LEGAL STANDARD**

2 “Unless federal law provides otherwise, an individual . . . may be served in a
3 judicial district of the United States by: (1) following state law for serving a summons
4 in an action brought in courts of general jurisdiction in the state where the district court
5 is located or where service is made . . .” Fed. R. Civ. P. 4(e). “A summons may be
6 served on a person outside this state . . . by sending a copy of the summons and of the
7 complaint to the person to be served by first-class mail, postage prepaid, requiring a
8 return receipt.” Cal. Code of Civil Procedure § 415.40. Proof of service in this manner
9 “shall include evidence satisfactory to the court establishing actual delivery to the
10 person to be served, by a signed return receipt *or other evidence*.” Cal. Code of Civil
11 Procedure § 417.20(a) (emphasis added).

12 “A summons may be served by publication if upon affidavit it appears to the
13 satisfaction of the court in which the action is pending that the party to be served
14 cannot with reasonable diligence be served in another manner specified in this article
15 and that . . . [a] cause of action exists against the party upon whom service is to be
16 made . . .” Cal. Code of Civil Procedure § 415.50. “Where no provision is made in
17 this chapter or other law for the service of summons, the court in which the action is
18 pending may direct that summons be served in a manner which is reasonably
19 calculated to give notice to the party to be served and that proof of such service be
20 made as prescribed by the court.” Cal. Code of Civil Procedure § 415.30. “[T]he
21 Constitution requires nothing more” than “means [of service] reasonably calculated to
22 apprise” the defendant “of the pendency of the lawsuit.” *Rio Properties, Inc. v. Rio*
23 *Int’l Interlink*, 284 F.3d 1007, 1018 (9th Cir. 2002) (affirming district court order
24 approving service via email).

1 **IV. ARGUMENT**

2 **A. Plaintiffs Have Served Mr. Koster And Koster Films LLC Pursuant**
 3 **To Cal. Code of Civil Procedure Section 415.40 and/or Section**
 4 **417.20(a) Because Plaintiffs Have Served Them Via Mail At The**
 5 **Address Mr. Koster Has Publicly Represented – To The Arizona**
 6 **Corporations Commission, The Arizona Courts, And The State Of**
 7 **Arizona – As Their Address**

8 Proof of service via mail on an out-of-state defendant pursuant to Cal. Code of
 9 Civil Procedure section 415.40 “shall include evidence satisfactory to the court
 10 establishing actual delivery to the person to be served, by a signed return receipt or
 11 other evidence.” Cal. Code of Civil Procedure § 417.20(a). Here, by delivering the
 12 complaint and summons via U.S. mail to 44047 North 43 Avenue, P.O. Box 75464,
 13 Phoenix, Arizona 85087, the address Mr. Koster has publicly designated as his, both
 14 personally and as statutory agent for his company Koster Films LLC, Plaintiffs have
 15 properly effected service via Cal. Code of Civil Procedure section 415.40 and/or Cal.
 16 Code of Civil Procedure section 417.20(a).

17 The Arizona Corporation Commission identifies Mr. Koster as the “Statutory
 18 Agent” for Koster Films, LLC, which is an Arizona Limited Liability Company.
 19 (Poorman Dec., Ex. A.) “A Statutory Agent’s responsibility is to accept Service of
 20 Process or legal documents on behalf of a corporation or limited liability company.”
 21 See <https://azcc.gov/corporations/faqs/statutory-agents> (last visited Feb. 1, 2023). The
 22 Arizona Corporation Commission also identifies Mr. Koster’s mailing address as
 23 Statutory Agent for Koster Films, LLC as “44047 North 43 Avenue, 75464, Phoenix,
 24 AZ 85087, USA.” (Poorman Dec., Ex. A.) In a separate lawsuit that Mr. Koster filed
 25 in Arizona, Mr. Koster, after initially retaining counsel, represented himself. In his
 26 filings with that court, as recently as September 24, 2021, Mr. Koster identified his
 27 address for service as the same 44047 North 43rd Avenue address. (Poorman Dec.,
 28 Ex. B.) Similarly, in that litigation, Mr. Koster submitted a copy of his Arizona
 Driver’s License which also reflects that same address. (*Id.*, Ex. C.) Mr. Koster has
 therefore publicly held out the 44047 North 43 Avenue address as his, and Koster

1 Films, LLC's, address, to the Arizona Corporation Commission, the State of Arizona
2 and the Arizona courts.

3 Plaintiffs effected service on Mr. Koster and Koster Films, LLC at that address
4 by successfully mailing the complaint and summons to that address – Plaintiffs'
5 December 12, 2022 certified mailing to Koster Films, LLC was delivered and has not
6 been returned. (Lim Dec., ¶¶ 2 - 7.) Because Mr. Koster has repeatedly represented
7 that the 44047 North 43 Avenue address is his address, personally and as Statutory
8 Agent for Koster Films, LLC, the fact that Plaintiffs mailed process to this address and
9 it has not been returned is sufficient "other evidence" that the summons and complaint
10 have been delivered to Mr. Koster and Koster Films, LLC. Cal. Code of Civil
11 Procedure § 417.20(a). Similarly, this proof shows that the mailing of the complaint
12 and summons to the 44047 North 43 Avenue address was "service in a manner which
13 is reasonably calculated to give notice" to Mr. Koster and Koster Films, LLC. *See*
14 Cal. Code of Civil Procedure § 415.30. This Court should, accordingly, issue an Order
15 deeming Mr. Koster and Koster Films, LLC to have been served properly with the
16 complaint and summons in this matter. *Rio Properties*, 284 F.3d at 1018.

17 **B. Alternatively, Plaintiffs Request Permission To Serve Mr. Koster**
18 **and Koster Films, LLC Via Email, Or In The Alternative Via**
19 **Publication, And Additional Time To Effect Such Service**

20 Should the Court find that Plaintiffs have not adequately served Mr. Koster or
21 Koster Films, LLC, Plaintiffs request, in the alternative, that the Court authorize
22 Plaintiffs to serve those Defendants via email, pursuant to California Code of Civil
23 Procedure section 415.30, or, in the alternative if the Court is disinclined to authorize
24 email service, via publication pursuant to California Code of Civil Procedure section
25 415.50, and that the Court grant Plaintiffs additional time to effect such service.
26
27
28

1. This Court Should Authorize Plaintiffs To Serve Mr. Koster and Koster Films, LLC Via Email Because the Koster Films, LLC Website Lists A Contact Email Address, Plaintiffs Have Regularly Communicated With Mr. Koster Via Email, And Plaintiffs Have Received No Bounce-Back Messages In Response To Their Recent Emails

The website for Koster Films, LLC (<http://kosterfilms.com/>) lists “fred@kosterfilms.com” as a contact email address. (Poorman Dec., Ex. K.) Moreover, Plaintiffs, during their time working with Mr. Koster and Koster Films, LLC, communicated with Mr. Koster via email at fred@kosterfilms.com and fknotebook@gmail.com. (Pham Dec., ¶ 3.) As recently as April 23, 2021, Mr. Koster responded from the fred@kosterfilms.com email address to an email from Plaintiff Minh Nguyen. (*Id.*, ¶ 4.) Further, on four separate dates since Plaintiffs filed their Complaint (December 13, 2022, January 9, 2023, January 25, 2023 and February 3, 2023), Plaintiffs emailed Mr. Koster at the fred@kosterfilms.com and fknotebook@gmail.com email addresses and never received a bounce-back message, indicating that those email accounts are still active. (Poorman Dec., ¶ 7, Exs. D-J.) Plaintiffs therefore respectfully request, in the alternative, that this Court authorize service on Mr. Koster and Koster Films, LLC via email to fred@kosterfilms.com and fknotebook@gmail.com, pursuant to California Code of Civil Procedure section 415.30. *See* Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 5-F, § 5:194.8 (“Electronic service may be upheld where service cannot be made by other means and the email does not bounce back and therefore is presumably received.”); *Glob. Impex, Inc. v. Specialty Fibres LLC*, 77 F. Supp. 3d 1268, 1271 (N.D. Ga. 2015) (“Other courts, particularly those interpreting California law as the Court does today, have accepted service via email as substituted service under Rule 4(e).”) (collecting cases); *see also Gaffigan v. Does 1-10*, 689 F. Supp. 2d 1332, 1342 (S.D. Fla. 2010) (“The undersigned finds that the emails that did not bounce back were presumptively sent to valid email addresses that reached Defendants.”).

2. In The Alternative, This Court Should Authorize Plaintiffs To Serve Mr. Koster and Koster Films, LLC Via Publication Because They Have Exercised Reasonable Diligence In Attempting To Serve Them, and Because Plaintiffs Possess Valid, Pending Causes Of Action Against Them

In the alternative, should the Court be disinclined to authorize service via email, Plaintiffs respectfully request permission to serve Mr. Koster and Koster Films, LLC via publication in Phoenix, Arizona, pursuant to Cal. Code of Civil Procedure section 415.50. Section 415.50 provides, in pertinent part, that “[a] summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that . . . [a] cause of action exists against the party upon whom service is to be made” “In determining whether a plaintiff has exercised ‘reasonable diligence’ for purposes of section 415.50(a), a court must examine the affidavit required by the statute to see whether the plaintiff ‘took those steps a reasonable person who truly desired to give notice would have taken under the circumstances.’” *Glob. Impex*, 77 F. Supp. 3d at 1270 (quoting *Donel, Inc. v. Badalian*, 87 Cal.App.3d 327, 333, 150 Cal.Rptr. 855 (1978)).

Plaintiffs have exercised reasonable diligence in attempting to serve Mr. Koster and Koster Films, LLC. Plaintiffs have attempted personal service at both residential addresses they have been able to identify for Mr. Koster, including staking out one address at different times and different dates. (Poorman Dec., ¶ 2; December 12, 2022 Declaration of Diligence of Jerry L. Horacek; December 20, 2022 Declaration of Diligence of Jerry L. Horacek.) To the best of Plaintiff’s knowledge, Mr. Koster no longer resides at either address. (See December 12, 2022 Declaration of Diligence of Jerry L. Horacek; December 20, 2022 Declaration of Diligence of Jerry L. Horacek.) Plaintiffs also attempted to serve Mr. Koster and Koster Films, LLC via U.S. mail pursuant to Cal. Code of Civil Procedure section 415.40 multiple times. (Lim Dec., ¶¶ 8 and 9.) In addition, Plaintiffs have served Mr. Koster and Koster Films, LLC via

1 email. (Poorman Dec., ¶ 7, Exs. D-G.) While Plaintiffs respectfully submit that they
2 have successfully served Mr. Koster and Koster Films, LLC via U.S. mail, should the
3 Court disagree, Plaintiffs’ efforts demonstrate that they have employed every
4 reasonable means at their disposal to effect service. Plaintiffs have therefore exercised
5 reasonable diligence in attempting to serve Mr. Koster and Koster Films, LLC. *See*
6 *Glob. Impex*, 77 F. Supp. 3d at 1270 (finding reasonable diligence where plaintiff had
7 attempted service via U.S. mail, personal service and email); *Bein v. Brechtel–Jochim*
8 *Grp.*, 6 Cal.App.4th 1387, 1390, 8 Cal.Rptr.2d 351 (1992) (“[T]wo or three attempts
9 at personal service at a proper place should fully satisfy the requirement of reasonable
10 diligence and allow substituted service to be made.”).

11 Moreover, “cause[s] of action exists against” Mr. Koster and Koster Films,
12 LLC. (Pham Dec., ¶ 2.) As set forth in their Complaint, Plaintiffs have pending causes
13 of action against Mr. Koster and Koster Films, LLC for copyright infringement, breach
14 of contract, fraud, misappropriation of likeness, conversion, declaration of copyright
15 invalidity and unjust enrichment. (*Id.*; *see* Complaint [ECF No. 1].)

16 Service via publication is therefore appropriate. *See* Cal. Code of Civ. Proc. §
17 415.50. Accordingly, Plaintiffs respectfully request an order authorizing them to serve
18 Mr. Koster and Koster Films, LLC via publication through the Arizona Business
19 Gazette, which is a weekly publication in Maricopa County. (Poorman Dec., ¶ 9.) All
20 four addresses Plaintiffs have been able to identify for Mr. Koster are also located in
21 Maricopa County. (*Id.*) Moreover, the Arizona Business Gazette is one of the
22 publications identified by the Arizona Corporation Commission as “hav[ing] attested
23 to the commission that they meet the statutory requirements for publishing documents
24 filed with the Commission.” *See* [https://azcc.gov/docs/default-source/corps-](https://azcc.gov/docs/default-source/corps-files/newspaper-list-for-publishing.pdf)
25 [files/newspaper-list-for-publishing.pdf](https://azcc.gov/docs/default-source/corps-files/newspaper-list-for-publishing.pdf) (last visited Feb. 1, 2023).

26 3. This Court Should Grant Plaintiffs Additional Time To Effect
27 Service On Mr. Koster And Koster Films, LLC Via Alternative
28 Means

Should the Court find that Plaintiffs have not already served Mr. Koster and

1 Koster Films, LLC, Plaintiffs respectfully request additional time to effect service.
2 Pursuant to Fed R. Civ. P. 4(m), February 21, 2023 is Plaintiffs' last day to serve Mr.
3 Koster and Koster Films, LLC, absent a showing of good cause. Plaintiffs have
4 diligently attempted to serve Mr. Koster and Koster Films, LLC, as set forth above. If
5 the Court finds that these attempts have not been effective, Plaintiffs respectfully
6 request a sixty (60)-day extension of that deadline to accomplish alternative service.

7 **V. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that this Court issue an
9 order finding that Plaintiffs have served Mr. Koster and Koster Films, LLC via mail
10 pursuant to Cal. Code of Civil Procedure Section 415.40 and/or Section 417.20(a). In
11 the alternative, Plaintiffs respectfully request permission to server Mr. Koster and
12 Koster Films, LLC via email, and, if the Court is disinclined to authorize service via
13 email, Plaintiffs respectfully request an order authorizing them to serve Mr. Koster
14 and Koster Films, LLC via publication. In the event that the Court does not find that
15 Plaintiffs have already served Mr. Koster and Koster Films, LLC, Plaintiffs
16 respectfully request a sixty (60)-day extension of the February 21, 2023 deadline to
17 effect service on those Defendants.

18
19 DATED: February 17, 2023

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

20
21
22 By: /s/ Jack Shaw

23 Jack Shaw
24 Jacob K. Poorman
25 *Attorneys for Plaintiffs*
26
27
28